this was due to the fact that the defendants were using too much clay. Mr. Angrove's report on the factory seems to suggest that the factory was badly run but he did to a certain extent corroborate the plaintiff's story as to the too high a loading of cheap filler.

Taking all these factors into account, in my judgment the defendants were not justified in summarily dismissing the plaintiff. In fact the evidence indicates that the plaintiff was not summarily dismissed, as he was given a month's salary in lieu of notice. This brings me back to the question of length of notice. I have already said that the plaintiff was entitled to give three months notice of termination of his service which he did on 9th March, 1961. The defendants should have allowed him to work out his period of notice, instead of which they wrongly gave him a month's notice. If they did not wish to keep him in the factory any longer, they should have given him three months notice instead of one month's notice. The plaintiff is therefore entitled to damages in the sum of $1,600, being two months salary.

There remains the plaintiff's claim for the return of textbooks, notebooks and attache case. He has not given any particulars as to what these textbooks etc. were. He had the key to the factory and his office when he left and I cannot accept his story that he left behind any of his belongings when he was told not to come back to work. This part of his claim will therefore be dismissed.

In the result there will be judgment for the plaintiff for $3,200 with costs.

Judgment for the plaintiff.

Solicitors:—*B. Kaher Singh & Karam; Shook Lin & Bok.*

NEOH SIEW ENG & ANOR. v. TOO CHEE KWONG

[O.C.J. (Gill J.) May 22, 1963]

[K.L. — Civil Suit No. 56 of 1963]

Landlord and Tenant—Agreement to supply water by landlord—Extent of—Supply cut off due to corroded pipe—Breach of agreement—Perpetual injunction—Damages.

Landlord and Tenant—Premium—Control of Rent Ordinance, 1956, s.4—Payment by tenant towards cost of building staircase—Whether a premium—Whether permission of Rent Assessment Board required under s.6.

The plaintiffs are the tenants of rent-controlled premises of which the defendant was the landlord. One of the terms of the tenancy was that the defendant as landlord and registered consumer in respect of water supply to the whole of the premises would pay $2 towards the water charges and that the plaintiffs would pay the amount in excess of that sum. As a result the plaintiffs had an uninterrupted flow of water to their part of the premises from the date of commencement of the tenancy in January 1962 until December 24, 1962 when the water supply stopped owing to the corroded state of the pipe. The defendant did nothing to repair the pipe until the Court made an interim order requiring her to restore the water supply on February 20, 1963.

Before they went into occupation of the premises the plaintiffs paid to the defendant a sum of $1,500 which the learned judge found to have been a contribution by the plaintiffs to the building of a staircase. In this action by the plaintiffs for restoration of the water supply, damages and return of the sum of $1,500.

Held: (1) the defendant was under an obligation not only to see that the supply of water was not deliberately cut off but also to use her best endeavours to keep all communication pipes in proper repair and generally to comply with all regulations of the Waterworks Department so that the water supply was not cut off;

(2) the plaintiffs are therefore entitled to damages and a perpetual injunction requiring the defendant to keep the water supply open;

(3) the sum of $1,500 being a contribution by the tenants towards work done by the landlord at the express wish of the tenants and not a payment in respect of the tenancy, was not a premium;

(4) section 6 of the Control of Rent Ordinance has no application.

Cases referred to:—

(1) *R.* v. *Fulham, Hammersmith and Kensington, Rent Tribunal* [1950] 2 All E.R. 211.

(2) *Day* v. *Singleton* [1899] 2 Ch. 320.

ACTION.

Richard Talalla for the plaintiffs.

S. Y. Chan for the defendant.

Cur. Adv. Vult.

Gill J.: This is an action by the plaintiffs as the tenants of the first floor of the premises known as No. 59, Bukit Bintang Road, Kuala Lumpur for (a) an injunction requiring the defendant as the landlord of the premises forthwith to restore the water supply to the first floor of the premises, (b) special and general damages arising out of the alleged cutting off by the defendant of the water supply and (c) the return of a sum of $1,500 alleged to have been paid by the plaintiffs as premium for the granting of the tenancy.

The premises are governed by the Control of Rent Ordinance, 1956 and the plaintiffs became the tenants under an oral contract of tenancy in January 1962 at a rent of $200 a month which was later increased to $206 a month. The defendant occupies the ground floor with her husband who is carrying on business as a medical practitioner on the premises. Both parties agree that one of the terms of the tenancy was that the defendant as the landlord and registered consumer in respect of water supply to the whole of the premises would pay $2 towards

the water charges and that the plaintiffs would pay the amount in excess of the said sum of $2. The plaintiffs allege that as a result of the agreement as regards water supply they had an uninterrupted flow of water to their part of the premises from the date of commencement of the tenancy in or about January 1962 until about 9 o'clock in the forenoon of 24th December, 1962 when the water supply stopped. They further allege that they paid a sum of $1,500 as "tea money" before they went into occupation of the premises.

It will be convenient if I deal first with the issue as to the alleged payment of $1,500 as premium. The defence to this part of the claim is that the first plaintiff, when she approached the defendant for a tenancy of the first floor of the premises some time in November 1961, wanted a separate staircase leading from the five-foot way to the first floor. When the defendant said that constructing a new staircase would cost money, the first plaintiff voluntarily agreed to contribute $1,500 towards the cost of construction. The original staircase to the first floor was from the ground floor of the premises. The defendant agreed to construct an independent staircase for the premises on the first floor and work was commenced in November 1961 and completed in January 1962. The cost of building a new staircase was $2,180 and the plaintiffs on 22nd January, 1962 paid their contribution of $1,500 for which a receipt was issued. The first plaintiff's story is that she had to get a receipt in order to convince the second plaintiff about the payment, but the second plaintiff says that she was present when the sum of $1,500 was paid.

I have considered the evidence of both parties as to this payment of $1,500 with great care and have come to the conclusion that it was a contribution towards the construction of a new staircase to suit the convenience of the plaintiffs as tenants of the first floor. I consider it highly improbable that the defendant, knowing that it was an offence for her to ask for "tea money", would have issued a receipt and thus provided tangible evidence against herself. I therefore find as a fact that the sum of $1,500 was not paid as "tea money". Mr. Talalla on behalf of the plaintiffs has argued that even if the sum of $1,500 was a voluntary payment towards the construction of a new staircase, it was a premium within the meaning of section 4 of the Control of Rent Ordinance No. 2 of 1956. He has further contended that in view of the provisions of section 6(1)(b)(ii) permission of the Board was necessary for obtaining payment of this sum of $1,500 from the plaintiffs. I cannot agree with either of the arguments put forward by Mr. Talalla. In my judgment section 6 (1) (b) (ii) has no application to the circumstances of this case, and I hold that this sum, being a contribution by the tenants towards work done by the landlord at the express wish of the tenants and not a payment in respect of the tenancy, was in no ordinary sense of the word a premium. The authority for this proposition is to be found in the case of *R.* v. *Fulham, Hammersmith and Kensington Rent Tribunal*[1].

Coming now to the question of water supply, the defendant's contention is that she did not undertake to supply the plaintiffs with water. Her contention is tenable only to the extent that she was not the actual supplier of water, but the question here is not what was expressly agreed as regards the supply of water but what was the implication of that agreement. The defendant is the registered consumer in respect of the water supply and it is common ground that there is a common water supply to both the ground floor and the first floor of the premises. The plaintiffs have no right to deal direct with the Waterworks Department who supply water to the whole of the premises. In order to give the transaction between the parties the efficacy which they must have intended it to have, the important thing is to ascertain what was within the contemplation of the parties. To my mind the presumed intention of the parties, founded upon reason, was that the defendant would do everything in her power to keep open a supply of water to the first floor of the premises, so that the supply of water was part and parcel of the tenancy agreement. This cast upon her the contractual obligation not only to see that the supply of water to the first floor was not deliberately cut off but also to use her best endeavours to keep all communication pipes etc. in proper repair and generally to comply with all regulations of the Waterworks Department so that the water supply was not cut off by that Department. I believe this principle emerges from the case of *Day* v. *Singleton*[2] in which it was held that, where in a contract of sale of leasehold property the consent of the landlord was required, the purchaser was entitled not only to the return of his deposit but also to damages for loss of his bargain through the omission of the defendant to obtain the lessor's consent.

It is alleged by the plaintiffs that the defendant deliberately cut off the water supply. However, it is abundantly clear from the evidence that the supply of water to the first floor stopped or was considerably reduced because the communication pipe to the premises from the water main was badly corroded. When the plaintiffs made their complaint on or about 24th December, 1962 about the failure of water, the defendant's husband caused enquiries to be made for the

cause of such failure. He rang up the Waterworks Department and some officers of that Department carried out an inspection as a result of which the Waterworks Engineer wrote a letter dated 2nd January, 1963 stating that the common pipe serving the premises was badly corroded and recommending that early action be taken to have the whole of the communication pipe replaced through a P.W.D. registered plumber. There was considerable delay on the part of the defendant to have the corroded pipe replaced. It would seem clear that she took the whole matter lightly until this Court made an interim order on 20th February, 1963 requiring her to restore the water supply. The corroded pipe was finally replaced on 17th March, 1963. In the circumstances the plaintiffs are entitled to a perpetual injunction against the defendant requiring her to keep the water supply open and for such damages as they suffered as a result of the lack of water from the date by which the defendant could reasonably have had the corroded pipe replaced to the date of restoration of the water supply.

As regards damages, the first plaintiff says that it cost her $2 per day to have water transported from elsewhere for her use in her hair-dressing saloon on the premises. This claim is not unreasonable in view of the fact that she must have required considerable quantities of water by reason of the fact that there was very little water in the taps. She further claims that she suffered a loss of about $50 per day, being the average daily takings in her saloon. However, evidence was led to show that somebody other than the first plaintiff was running the hair-dressing saloon on the premises from the 1st of November, 1962 to about the 3rd of January, 1963. I accept that evidence in spite of the first plaintiff's denial that somebody else was carrying on business there. Moreover, if she was getting water from elsewhere during the relevant period, there was no reason for her to completely shut down her hair-dressing saloon, although I agree that without running water she could not possibly shampoo her customers' hair. On going through her accounts, I find that her average takings for this part of her business were approximately $15 per day. She is entitled to claim that sum as her daily special damages.

I would say that in all the circumstances of the case the defendant should have had the corroded pipe replaced by 15th January, 1963 at the very latest. I would therefore allow damages from 16th January to 16th March, 1963, a period of 60 days, at $17 per day making a total of $1,020. For all the discomfort and embarrassment which the first plaintiff suffered I would allow general damages in the sum of $400.

There will accordingly be judgment for the plaintiffs in the sum of $1,420 and an order directing the defendant to give the plaintiffs an uninterrupted supply of water and for that purpose to comply with all the regulations of the Waterworks Department. As the plaintiffs have failed in respect of their claim for the sum of $1,500, I would allow three-quarters of the plaintiffs' taxed costs.

Order accordingly.

Solicitors:—*Richard Talalla; S. Y. Chan & Co.*

JAGANATHAN v. PUBLIC PROSECUTOR

[C.A. (Hill Ag. C.J., Barakbah J.A., Ismail Khan J.) June 3, 1963]

[K.L. — F.M. Criminal Appeal No. 11 of 1963]

Penal Code s.300—Murder—Exceptions to s.300—Sudden fight or grave and sudden provocation—Trial judge not directing jury on possible defences—Duty of trial judge in such case.

In a trial for murder it is the duty of the trial judge if the evidence indicates the possible defence of one or more of the exceptions under section 300 of the Penal Code to mention the possible defence or defences to the jury and direct them accordingly.

COURT OF APPEAL (CRIMINAL).

L. P. Thean for the appellants.

H. S. Ong for the respondent.

Hill Ag. C.J.: It is not necessary to go into the details of this trial. The prosecution had at the trial proved that the appellant killed the deceased. This was believed by the jury. The evidence, however indicate the possible defence of one of the four exceptions under section 300 of the Penal Code namely the fourth, which states that culpable homicide is not murder if it is committed without premediation, in a sudden fight, in the heat of passion or under grave and sudden provocation.

We are not suggesting for one moment that this defence was necessarily a good one in the circumstances of this case, but it is quite possible that had the jury's attention been directed to the exception they would not have found the accused guilty of murder. It is by no means impossible that had the learned trial judge told them of this exception they would have had some doubt in their minds and given the accused the benefit of it. Where such a situation arises in the course of a trial it is the duty of the trial judge, to mention the possible defence to the jury and direct them on it. In this instance this was not done.

In the circumstances we feel that we have